

*NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Rhodes Heating & Roofing Co. and United Union of Roofers, Waterproofers and Allied Workers  
Local No. 20. Case 17-CA-17332**

April 28, 1995

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS STEPHENS, BROWNING, AND COHEN

On September 15, 1994, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> inter alia, ordering Rhodes Heating & Roofing Co., to make all required contributions to the various fringe benefit funds on behalf of the unit employees, to remit union dues that were deducted from the pay of unit employees, and to make whole certain of its unit employees and the Union for loss of earnings and other benefits resulting from its unlawful failure to do so. On January 3, 1995, the United States Court of Appeals for the Tenth Circuit enforced the Board's Order.

A controversy having arisen over the amount of fringe benefits due employees and dues owed the Union, on March 13, 1995, the Regional Director for Region 17 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated March 30, 1995, the Respondent informed the Regional Director that the Respondent was out of business, has no ability to pay the backpay owed, and advised that the Respondent would not file an answer to the compliance specification.

On April 7, 1995, the General Counsel filed with the Board a Motion for Summary Judgment on the compliance specification, with exhibits attached. On April 10, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer,<sup>2</sup> we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the amounts due the funds and the dues owed the Union are as stated in the compliance specification, and we will order payment by the Respondent of the amounts to the respective funds and the Union, plus interest accrued on the amounts to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Rhodes Heating & Roofing Co., Lawrence, Kansas, its officers, agents, successors, and assigns, shall pay each of the fringe benefit funds and the Union the following amounts plus interest:

Health & Welfare Plan	\$1,782.50
Local Pension Plan	783.75
National Roofing Industry Pension Plan	595.65
Vacation-Savings Plan	627.00
Apprenticeship Training Program Fund	87.78
United Way	6.27
Union Dues/Fees	399.47
<b>Total</b>	<b>\$4,282.42</b>

<sup>2</sup> Neither the fact that the Respondent has closed, nor its lack of assets or financial resources to pay the backpay award owed constitute good cause for failure to file an answer or is otherwise a basis for denying the motion for summary judgment. See, e.g., *Cornerstone Builders*, 309 NLRB 407 (1992).

<sup>1</sup> 314 NLRB 1166.

Dated, Washington, D.C. April 28, 1995

---

James M. Stephens,                      Member

---

Margaret A. Browning,                      Member

---

Charles I. Cohen,                      Member

(SEAL)                      NATIONAL LABOR RELATIONS BOARD